No. 01-7

Supreme Court, U.S.
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In The

Supreme Court of the United States

KAY SADAO KATO, *et al.*,

Petitioners,

v.

UNITED STATES, *et al.*,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF *AMICI CURIAE* OF INTERNATIONAL LAW ERIC K. YAMAMOTO, UNIVERSITY OF HAWAII SCHOOL OF LAW, DALE MINAMI, MINAMI, LEW & TAMAKI, AND NATSU SAITO, GEORGIA STATE UNIVERSITY COLLEGE OF LAW IN SUPPORT OF PETITIONERS

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INTEREST OF AMICI[1]

Amici Eric K. Yamamoto and Natsu Taylor Saito are professors of law expert in the fields of international law, international human rights, domestic civil rights, and the application of international law by the courts of the United States, as more particularly set forth below. Amicus Dale Minami is an expert in civil rights law and has litigated numerous cases concerning the World War II internment of Japanese Americans. The views of jurists and scholars on points of international law are taken into account when such questions arise in U.S. courts. See, *e.g.*, *The Paquete Habana*, 175 U.S. 677, 700 (1900); *United States v. Smith*, 18 U.S. 153, 160-161 (1820).

Eric K. Yamamoto is a Professor of Law at the University of Hawai'i School of Law, where he teaches in the areas of civil and human rights law, racial justice, civil procedure and complex litigation. Professor Yamamoto was co-counsel to Fred Korematsu in the *coram nobis* proceeding re-opening the World War II Japanese American internment case, *Korematsu v. United States*, 323 U.S. 214 (1944). See *Korematsu v. United States*, 584 F. Supp. 1406 (N.D. Cal. 1984). He was also procedural consultant to the legal team which brought several human rights cases against Ferdinand Marcos for the torture and murder of political dissidents in the Philippines. See, *e.g.*, *Trajano v. Marcos*, 978 F.2d 493 (9th Cir. 1992). Professor Yamamoto has written numerous law review articles including *Collective Memory, History and Social Justice* (with Sharon Hom), 47 U.C.L.A. L. Rev. 1747 (2000); *Racial*

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[1] Letters of consent to the filing of this brief have been lodged with the Clerk of Court pursuant to Rule 37.3 of this Court. Pursuant to Rule 37.6, amici state that they authored this brief in its entirety. A monetary contribution to cover the cost of printing and postage was made by William C. Wardlaw, III.

Reparations: Japanese American Redress and African American Claims, 40 B.C. L. REV. 477, 19 B.C. THIRD WORLD L.J. 477 (1998); and *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-civil Rights America*, 95 MICH. L. REV. 821 (1997).

Natsu Taylor Saito is a Professor of Law at the Georgia State University College of Law, where she teaches Public International Law, International Human Rights Law, Immigration Law, and Race and the Law. She has written a law review article on international law and the internment of Japanese Latin Americans, *Justice Held Hostage: U.S. Disregard for International Law in the World War II Internment of Japanese Peruvians – A Case Study*, 40 BOSTON COLL. L. REV. 275, 19 B.C. THIRD WORLD L.J. 275 (1998) (joint issue), and filed an amicus brief in the Ninth Circuit Court of Appeals in a related case, *Henry Koshio Shima v. United States* (unpublished opinion, May 2, 2001). Her other publications include *From Slavery and Seminoles to AIDS in South Africa: An Essay on Race and Property in International Law*, 45 VILLANOVA L. REV. 1135 (2000); *Crossing the Border: The Interdependence of Foreign Policy and Racial Justice in the United States*, 1 YALE HUM. RTS. DEV. L.J. 4 (1998) (web-based journal: http://diana.law.yale.edu/yhrdlj/); and *Alien and Non-Alien Alike: Citizenship, "Foreignness" and Racial Hierarchy in American Law*, 76 OREGON L. REV. 261 (1997).

Amicus Dale Minami of the law firm of Minami, Lew & Tamaki, has litigated cases involving civil rights, human rights and constitutional law for decades. He has brought numerous cases vindicating the civil rights of Asian Americans, including cases involving police practices, employment discrimination, and access to education, and was the co-founder of the Asian Law Caucus and its managing attorney for several years. Dale Minami was lead counsel for Presidential Medal of Freedom

award winner Fred Korematsu, in the *coram nobis* case which overturned Korematsu's forty-year-old conviction for refusing to obey military orders during the World War II internment of Japanese Americans.

Thus having an interest, through scholarship and practice, in the development of jurisprudence on various questions related to the pending matter, amici file this brief with the United States Supreme Court concerning the construction of the Civil Liberties Act of 1988 (hereinafter "CLA"), 50 U.S.C. §§ 1989 *et seq.*, as amended, in light of the international legal obligations of the United States, in the context of the present appeal of the decision of the circuit court.

STATEMENT OF THE CASE

Amici incorporate by reference the statement of the case submitted by the Petitioners.

SUMMARY OF ARGUMENT

The United States government has made promotion of the global rule of law, particularly human rights law, a centerpiece of its foreign policy, and U.S. federal courts are rapidly becoming the forum of choice for international litigation. The United States has also been very active in promoting redress for World War II victims of human rights abuses. At the same time, the United States has been criticized for what is perceived as a failure to hold itself to the standards it promotes internationally, and the decisions of federal courts in international human rights cases are closely scrutinized by the international judicial community.

In this case, which involves the United States' failure to compensate for significant violations of international law in its World War II internment of Japanese Americans and Japanese Latin Americans, these dynamics come

together in sharp focus. While it does not involve large numbers of people or large sums of money, it is being closely watched as an indicator of whether United States courts take international law seriously.

It is undisputed that the United States government engaged in numerous violations of international law when it caused the imprisonment of Petitioners Kato and Yano in concentration camps, and caused the Ogura family Petitioners, along with over two thousand similarly situated Japanese Latin Americans, to be kidnapped and deported from their homelands, transported to the United States against their will, some forced to perform unpaid labor en route, imprisoned for the duration of the war in the United States, and subsequently deported against their will to Japan. These actions violated well-established proscriptions against the indefinite internment of civilians, the kidnapping and deportation of civilian non-combatants from non-belligerent to belligerent countries on the basis of their racial or ethnic identification without charge, hearing or determination that they posed a threat to any nation's security, and the holding of hostages.

The right to redress is a well-established principle of international law, and the United States' on-going refusal to compensate Petitioners for these violations constitutes a continuing violation of international law. Further, the refusal to provide redress under the Civil Liberties Act of 1988 on the basis of national origin constitutes an additional on-going violation of international law.

International law has been recognized as part of the supreme law of the land since the ratification of the Constitution. Long-standing rules of statutory construction mandate that, where possible, the courts must interpret statutes in accordance with the United States' obligations under international law. Because the lower

courts' summary dismissal of Petitioners' claims signals a disregard for both the Petitioners' civil and human rights, and for international law more generally, amici urge this Court to grant Petitioners' request for a writ of certiorari and to consider the international law claims raised in this case. Failure to do so not only harms Petitioners and similarly situated Japanese Americans and Japanese Latin Americans, but also harms the interests of the United States by sending the message that the United States government believes it can violate international law with impunity while sanctioning other nations for their failure to comply with the global rule of law.[2]

ARGUMENT

A. The United States' Kidnapping, Indefinite Imprisonment, Holding Hostage, and Deportation of Petitioners During World War II Violated International Law

1. Kidnapping, Transporting and Deporting Petitioners Violated International Law

The United States violated well-established principles of international law by collaborating with the Peruvian government (as well as other Latin American governments) to kidnap and deport Petitioners and other civilian non-combatants, many of whom were citizens of those Latin American countries, from a non-belligerent country to a belligerent country, on the basis of their racial or ethnic identification, without charge, hearing or

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[2] For a more detailed discussion of the arguments made herein, see Natsu Taylor Saito, *Justice Held Hostage: U.S. Disregard for International Law in the World War II Internment of Japanese Peruvians – A Case Study*, 40 BOSTON COLL. L. REV. 275, 19 B.C. THIRD WORLD L.J. 275 (1998) (joint issue).

determination that they posed a serious threat to U.S., Peruvian or "hemispheric" security.

Article 49 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949 (hereinafter "Geneva Convention") states:

> Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the occupying power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

Aug. 12, 1949, 75 U.N.T.S. 287 (1949). Article 146 of the Geneva Convention provides that the parties will "undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches . . . defined in the following Article." Article 147 says, "Grave breaches . . . shall be those involving any of the following acts . . . unlawful deportation or transfer or unlawful confinement of a protected person. . . . " *Id.*

While the drafting of this treaty was not completed until a few years after World War II, "[t]hese articles of the Geneva Convention of 1949 merely codify the prohibition of deportations of civilians from occupied territories which in fact already existed in the laws and customs of war," and a proposal to prohibit deportations had been included in the Tokyo Draft of the Geneva Convention adopted at the International Red Cross Conference of 1934. Alfred M. de Zayas, *International Law and Mass Population Transfers*, 16 HARV. INT'L L.J. 208, 210 (1975).

Some of this customary law had been codified in the 1907 Hague Regulations. See 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land and the 1907 Hague Convention (V) Respecting the Rights and Duties of Neutral Powers and Persons in Case of War

on Land, also known as the Hague Regulations. According to the Commentary to the 1949 Geneva Convention, the 1907 Hague Regulations probably did not explicitly prohibit deportations "because the practice of deporting persons was regarded . . . as having fallen into abeyance." Jean-Marie Henckaerts, *Deportation and Transfer of Civilians in Time of War*, 26 VAND. J. TRANSNAT'L L. 469, 480 (1993).

Even further back than the Hague Conventions, deportations of civilians were condemned by the United States in 1863 in Lieber's Code, also known as U.S. Army General Order 100. The Code mandated, "Private citizens are no longer murdered, enslaved, or carried off to distant parts, and the inoffensive individual is as little disturbed in his private relations as the commander of the hostile troops can afford. . . . " RICHARD HARTIGAN, LIEBER'S CODE AND THE LAW OF WAR 45, 49 (1983).

Throughout the Second World War, the Allies made it clear that they considered the mass expulsion of civilians to be criminal. Deportation of civilians during World War II was among the war crimes for which German and Japanese defendants were convicted by the Nuremberg and Tokyo Tribunals. Article 6 of the Charter of London, which established the basis for the International Military Tribunal at Nuremberg, gave the Tribunal jurisdiction over three categories of crimes: (1) crimes against peace; (2) war crimes, "namely, violations of the laws or customs of war . . . [which] shall include, but not be limited to . . . ill-treatment or deportation to slave labor or for any other purpose of civilian population . . . " ; and (3) crimes against humanity, which included " . . . deportation, and other inhumane acts committed against any civilian population . . . ; or persecution on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether

or not in violation of the domestic law of the country where perpetrated." Agreement and Charter of the International Military Tribunal, Art. 6 (Aug. 8, 1945), 82 U.N.T.S. 279 (1945).

According to international military scholar Georg Schwarzenberger,

> In the Charter of the Nuremberg Tribunal, deportation of civilians from occupied territories to slave labour or for any other purpose is enumerated, under the heading of war crimes in the strict sense, that is, breaches of the laws or customs or war, and that of crimes against humanity. In the Charter of the Tokyo Tribunal, the subject is specifically mentioned only under the latter heading. . . . there is, however, no doubt about it that breaches of the law of belligerent occupation constitute breaches of the laws and customs of war and, therefore, amount to war crimes in the technical sense. Thus, under both Charters, deportation is a war crime in the technical sense and a crime against humanity. GEORG SCHWARZENBERGER, INTERNATIONAL LAW AS APPLIED BY INTERNATIONAL COURTS AND TRIBUNALS: THE LAW OF ARMED CONFLICT 231 (1968) (hereinafter *Schwarzenberger*) at 231.

The Nuremberg and Tokyo Tribunals focused especially on the use of deported civilians as slave labor. *Id.* at 225-226, 230-232. "Forced labour in tropical heat without protection from the sun, complete lack of housing and medical supplies and insistence on work directly related to military operations were some of the features of forced labour castigated in the *Tokyo* Judgment (1948)." *Id.* at 224-226 (noting that compulsory labor was also forbidden by Article 52 of the Hague Regulations of 1899 and 1907). This description fits quite closely the actions of the United States in forcing many of the Japanese Latin Americans to clear jungle, build barracks and perform

other forced labor in the Canal Zone without remuneration.

The United States participated in the prosecution of war criminals at Nuremberg and Tokyo for the crime of deporting civilians during World War II. For the same reasons that it justified these prosecutions, the U.S. government was responsible for knowing that deporting civilians and transporting them from Latin America to the United States was a war crime. Similarly, the forced deportation of Japanese Latin Americans like the Ogura family Petitioners from the United States to Japan at the end of the war constituted a clear violation of international law.

Thus, in its internment of Japanese Americans and Japanese Latin Americans during World War II, the United States violated numerous well-established principles of international law; the very principles which it applied to the Germans and Japanese tried before the Nuremberg and Tokyo Tribunals.

2. The Indefinite Imprisonment of Petitioners Violated International Law

It is well-established that the wholesale internment of civilians based solely on race or national origin, with no individualized inquiry as to security concerns is a violation of international law, even when it occurs during time of war. The internment of civilians by belligerents was discussed as early as the Hague Peace Conferences of 1899 and 1907, but it was decided that an express prohibition was not required as the practice fell below the minimum standard of civilization. SCHWARZENBERGER at 221.

According to Schwarzenberger, it was "the German and Japanese practices, during the Second World War, of wholesale internment of civilians in concentration camps, irrespective of security requirements in individual cases

or for entirely different purposes" that led to the much more precise codification of minimum standards concerning internment that are in the 1949 Geneva Convention. *Id.* at 223. Article 42 of this Convention states that the "internment or placing in assigned residence of protected persons may be ordered only if the security of the Detaining Power makes it absolutely necessary," and Article 43 provides that any person so interned "shall be entitled to have such action reconsidered as soon as possible by an appropriate court or administrative board . . . [which, if the internment is maintained] shall periodically, and at least twice yearly, give consideration to his or her case, with a view to the favourable amendment of the initial decision. . . . " Geneva Convention, Arts. 42, 43. The United States did not comply with either of these standards in Petitioners' cases.

The Alien Enemy Act of 1798, 1 Stat. 577, 50 U.S.C. §§ 21 *et seq.* (1998) did provide statutory authorization for the Presidential proclamations which allowed the Attorney General to subject enemy aliens to "summary apprehension" during World War II. See Presidential Proclamation No. 2525, 6 FED. REG. 6321 (1941); Proclamation No. 2526, 6 FED. REG. 6323 (1941); Proclamation No. 2527, 6 FED. REG. 6324 (1941). This did not necessarily violate international law, as it is recognized that enemy aliens who are in the territory of a belligerent can be detained, at least for as long as is necessary to determine if they pose a danger to the security of the country. However, the Act and the related Presidential Proclamations cannot justify the indefinite detention of civilians who were legally in the country (as was Petitioner Kato), born in internment camps (as was Petitioner Yano), or brought into the territory against their will, given no hearings, and known to pose no danger to U.S. or hemispheric security (as were the Ogura family Petitioners).

The United States recognizes that arbitrary or prolonged detention is a violation of international law, even when it is not specifically barred by domestic law. According to the notes to Section 702 of the Restatement on the Foreign Relations Law of the United States, "Arbitrary detention is cited as a violation of international law in all comprehensive international human rights instruments. . . . It is included also in United States legislation and national policy statement citing violations of fundamental human rights. . . . " RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES, pt. 1, ch. 1, § 702, n. 6 (1987).

3. Petitioners Were Held as Hostages in Violation of International Law

A hostage is "a person detained for reasons unconnected with his own acts or omissions." SCHWARZENBERGER at 240-241. This definition clearly fits Petitioners and similarly situated Japanese Americans and Japanese Latin Americans, and it was well-established at the time that the holding of hostages was a violation of international law.

In the 1934 Tokyo Draft of the International Red Cross Convention on the protection of civilian alien enemies, reprisals against civilians and the taking of hostages were forbidden. See Robert R. Wilson, *Treatment of Civilian Alien Enemies*, 137 AM. J. INT'L L. 30, 34-35 (1943). The Nuremberg Tribunal referred on several occasions to the taking and killing of hostages, referring, for example, under the heading of "Murder and Ill-Treatment of Civilian Population," to the German practice of "keeping hostages to prevent and to punish any form of civil disorder." SCHWARZENBERGER at 239-240. Although the Tribunal did not rule specifically on the taking (as opposed to killing) of hostages, the Prosecution, led by U.S.

Supreme Court Justice Jackson, argued that, "irrespective of the illegality of the shooting of hostages, under Article 50 of the Hague Regulations, the taking of hostages was illegal." INTERNATIONAL MILITARY TRIBUNAL PROCEEDINGS (English ed., Pt. 5 1946), at 124.

Article 3 of the 1949 Geneva Convention states that in the case of armed conflict within the territory of a Party, the taking of hostages is prohibited at any time and in any place with respect to persons taking no active part in the hostilities. With respect to persons in the territories of parties to the conflict or in occupied territories, Article 34 simply states, "The taking of hostages is prohibited." While the Geneva Convention had not been drafted at the time the United States was holding Japanese Latin Americans as hostages for exchange, it illustrates what was commonly accepted in international law at that time.

Japanese Latin Americans and, to some extent, U.S. citizens and residents of Japanese descent, were held as hostages by the United States government, not because of any act or omission of their own, but because the government thought it could use them, either as "bait" for an exchange or as a "reprisal reserve" to gain better treatment for U.S. citizens held by the Japanese government. See MICHI WEGLYN, YEARS OF INFAMY: THE UNTOLD STORY OF AMERICA'S CONCENTRATION CAMPS (1996) at 55-56, 160-166, 182 (hereinafter WEGLYN).

B. The Government's Continuing Refusal To Redress These Wrongs Constitutes An On-Going Violation of International Law

1. The United States Has An Obligation To Provide Effective Redress

"[T]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first

duties of government is to afford that protection." *Marbury v. Madison*, 5 U.S. 137, 163 (1803). Just as the concept that there should be a remedy for every wrong is a basic principle of our legal system, the right to redress of a wrong is a fundamental principle of international law. The Universal Declaration of Human Rights, widely acknowledged as reflecting binding norms of customary international law, states: "Everyone has a right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law." Universal Declaration of Human Rights, G.A. Res. 217, art. 8 (III, 1948).

The importance of this principle has been acknowledged in the recent settlement of various actions brought by victims of the Nazi holocaust. Recognition of this right pre-dates World War II and has been incorporated into both treaties and international legal opinions. As the Permanent Court of International Justice stated in 1928 in the Chorzow Factory case, "reparation must, as far as possible, wipe out all consequences of the illegal act and re-establish the situation which would . . . have existed if the act had not been committed." Chorzow Factory (Indemnity), 1928 P.C.I.J. (ser. A.) No. 17 at 47.

The United States' failure to compensate the Japanese Latin American victims of these war crimes is itself a violation of international law. The fact that these violations were committed over fifty years ago does not reduce the government's responsibility for two reasons. First, there is no statute of limitations on war crimes, as recognized and affirmed in the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity. G.A. res. 2391 (XXIII), annex 23 U.N. GAOR Supp. (No. 18) at 40 (1968) (entered into force 1970). Although the U.S. is not a party to this Convention, on this principle its declaration is recognized

as reflecting customary international law, which does bind the United States.

Second, because it has an on-going responsibility to compensate the victims, the United States is engaging in an on-going violation of international law by failing to do so, and in that respect a statute of limitations, should one exist, would not have begun to toll.

2. The Exclusion of the Latin American Petitioners From Redress Under the CLA Constitutes Unlawful Discrimination On The Basis Of Race and National Origin

It is not disputed that the U.S. government took only those German and Italian Americans and Latin Americans who were individually deemed to be dangerous, while interning all persons of Japanese descent on the west coast of the United States, and while kidnapping and deporting Japanese Latin Americans solely on the basis of their ancestry. WEGLYN at 63, quoting letter from Secretary of State Hull to President Roosevelt (Aug. 27, 1942). At the time, U.S. officials were cognizant of the racism behind the Peruvian government's efforts to rid the country of its Japanese population. They supported and directed the activities of the Peruvian authorities in this matter. See JOHN EMMERSON, THE JAPANESE THREAD: A LIFE IN THE U.S. FOREIGN SERVICE 125-149 (1978); see generally, C. HARVEY GARDINER, PAWNS IN A TRIANGLE OF HATE: THE PERUVIAN JAPANESE AND THE UNITED STATES (1981).

At the time of the internment, there were no international agreements prohibiting racial discrimination. However, due in large measure to the horrors of World War II, such prohibitions have become well-established in international law. The Universal Declaration of Human Rights, adopted in 1948, states in Article 2 that everyone is entitled to all the rights and freedoms set forth in this

Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The International Covenant on Civil and Political Rights, 999 U.N.T.S. 171 (1966) (entered into force Mar. 23, 1976), to which the United States is a party, states that "the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race . . . national or social origin, property, birth or other status." art. 26. The International Convention on the Elimination of All Forms of Racial Discrimination defines "racial discrimination" to mean:

> Any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, or human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. U.N. 600 U.N.T.S. 195 (entered into force Jan. 4, 1969) art. 1(1).

Under these standards, now universally accepted, the failure to compensate the Ogura family Petitioners and other interned Japanese Latin Americans because they were not from the United States, but had been kidnapped and brought to this country against their will, constitutes on-going discrimination on the basis of race and national origin.

C. Well-Established Rules of Statutory Construction Dictate That Courts Construe The Civil Liberties Act of 1988 In Light of The United States' International Obligations

Article VI of the Constitution of the United States provides that the Constitution, the laws made pursuant to

it, and "all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land." U.S. CONST. art. VI, cl. 2. The Supreme Court stated in 1900 in *The Paquete Habana* that:

> International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination. For this purpose, where there is no treaty, and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations; and, as evidence of these, to the works of jurists and commentators, who by years of labor, research and experience, have made themselves peculiarly well acquainted with the subjects of which they treat. Such works are resorted to by judicial tribunals, not for the speculations of their authors concerning what the law ought to be, but for trustworthy evidence of what the law really is. 175 U.S. 677, 700 (1900) (citing *Hilton v. Guyot*, 159 U.S. 113, 163, 164, 214, 215).

The Restatement (Third) of the Foreign Relations Law of the United States says that "[i]nternational law is law like other law, promoting order, guiding, restraining, regulating behavior. . . . It is part of the law of the United States, respected by Presidents and Congresses, and by the States, and given effect by the courts." RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES, pt. I, ch. 1 (1987).

As recognized by Chief Justice Rehnquist, "it has been a maxim of statutory construction since the decision in *Murray v. The Schooner Charming Betsy*, [6 U.S. 64, 118 (1804)] that 'an act of congress ought never to be construed to violate the law of nations, if any other possible construction remains. . . . " *Weinberger v. Rossi*, 456 U.S.

25, 32 (1982); *see also Trans World Airlines, Inc. v. Franklin Mint Corp.*, 466 U.S. 243, 252 (1984) ("There is . . . a firm and obviously sound canon of construction against finding implicit repeal of a treaty in ambiguous congressional action. . . . "); *Garcia-Mir v. Meese*, 788 F. 2d 1446, 1453 (11th Cir. 1986) ("To the extent possible, courts must construe American law so as to avoid violating principles of public international law.") (citing *Murray v. The Schooner Charming Betsy*, 6 U.S. at 118).

In enacting the Civil Liberties Act of 1988, Congress manifested neither an awareness that it might be abrogating the United States' treaty obligations or customary international law, nor any desire to do so. In fact, Congress' explicitly stated purposes were to acknowledge and apologize for the internment of persons of Japanese descent during World War II; to prevent the recurrence of racially-motivated rights violations; and to enhance the credibility of the United States in its efforts to persuade other nations not to condone violations of human rights and international law. 50 U.S.C. § 1989.

Thus, it is most reasonable for this Court to interpret the CLA in accordance with binding obligations of international law and allow Petitioners an effective remedy for the violations of international law that they have been subjected to for over fifty years.

D. Failure To Provide Petitioners Relief Would Give Impunity to Violations of International Law and Risk Harming The United States' Interests

The plight of the Japanese Latin Americans, as well as that of other persons of Japanese descent whose internment has not been redressed by the U.S. government, has slowly been coming to the attention of the American public and the international community. Testimony about the Japanese Peruvian internment was presented to the

Commission on Wartime Relocation and Internment of Civilians, established by Congress in 1980, and resulted in acknowledgment of the program in the Commission's final report. See Commission on Wartime Relocation and Internment of Civilians, Personal Justice Denied (1982), Appendix D. The outcome of *Mochizuki v. United States*, 43 Fed. Cl. 97 (1999), has been followed with interest throughout the world. Testimony about the war crimes committed by the United States, and the need for redress, has been presented to the United Nations' Commission on Human Rights. International Educational Development Submission of March 1998 to 54th Session of the United Nations Commission on Human Rights. Whether the United States government likes it or not, the matter is now before the court of international opinion.

Compensation for the victims of World War II war crimes has become a topic of widespread interest, and the U.S. government has been a major player in reparations movements, particularly the effort to compensate for actions of the Nazis. In Stuart Eizenstat's words, "[t]his can be a healing process, which can strengthen each of our countries and bring this century to a close on a high note of justice." Barry Schweid, *39 Nations Seek Art Looted by Nazis*, AP, July 1, 1998. But the United States looks hypocritical in the face of its refusal to meaningfully compensate all those interned because of their Japanese descent. It diminishes U.S. credibility and also devalues international law in ways we may not fully recognize for a long time.

The effectiveness and credibility of international law rests on the recognition it receives from the governments of the world, and when a government as powerful as the United States refuses to take it seriously, the stage is set for other governments – and non-governmental groups, including the "terrorist" organizations frequently

denounced by the United States – to ignore international law at will.

Ironically, one of the stated purposes of the CLA is to "make more credible and sincere any declaration of concern by the United States over violations of human rights committed by other nations." 50 U.S.C. § 1989. The exclusion of Petitioners and other Japanese, Japanese American, and Japanese Latin American internees from its provisions on the basis that they were here legally but not as permanent residents, were born into internment after an arbitrary cut-off date, or are now deemed to have been "illegal aliens" because they were kidnapped and brought here from Latin America, ignores the entire realm of international humanitarian and human rights law. If viewed only in quantitative terms, this could, perhaps, be dismissed as a small incident. But it is difficult to see how the U.S. government's resolution of it could be perceived by anyone, inside or outside of the United States, as reflecting anything but disdain for international law and human rights. As such, it sends a stark message, one that directly contradicts the purpose of the Civil Liberties Act and undermines the credibility of the United States in protesting violations of international law and human rights by other nations.

CONCLUSION

United States federal courts are increasingly being viewed as an effective forum for the enforcement of international law. However, if they are perceived as callously disregarding international law when U.S. violations, particularly undisputed violations dating from World War II, are at issue, the credibility of the U.S. judiciary will be severely diminished.

For all of these reasons, amici urge this Court to grant Petitioners' request for a writ of certiorari. This will

not only comport with long-standing jurisprudence regarding the enforcement of international law in our courts, but will also assure other nations, nations carefully watching our handling of World War II redress cases, that we take international law seriously and can be entrusted with the enforcement of the rights we advocate throughout the world.

Dated this 12th day of July, 2001.

Respectfully submitted,

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